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Operating Engineers Pension Trust, et al.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

TRUSTEES OF THE OPERATING  
ENGINEERS PENSION TRUST,  
TRUSTEES OF THE OPERATING  
ENGINEERS HEALTH AND  
WELFARE FUND, TRUSTEES OF THE  
OPERATING ENGINEERS  
VACATION-HOLIDAY SAVINGS  
TRUST, TRUSTEES OF THE  
OPERATING ENGINEERS TRAINING  
TRUST, TRUSTEES OF THE  
OPERATING ENGINEERS LOCAL 12  
DEFINED CONTRIBUTION TRUST,  
ENGINEERS CONTRACT  
COMPLIANCE COMMITTEE FUND,  
CONTRACT ADMINISTRATION  
FUND, SOUTHERN CALIFORNIA  
PARTNERSHIP FOR JOBS FUND, and  
OPERATING ENGINEERS WORKERS  
COMPENSATION TRUST,

Plaintiffs,

vs.

TITAN ENGINEERING, INC., a  
California corporation,

Defendant.

CASE NO.: 5:23-cv-15

**COMPLAINT FOR:**

**BREACH OF WRITTEN  
COLLECTIVE BARGAINING  
AGREEMENT AND VIOLATION OF  
ERISA § 515 [29 U.S.C. § 1145]**

1 Plaintiffs TRUSTEES OF THE OPERATING ENGINEERS PENSION  
2 TRUST, TRUSTEES OF THE OPERATING ENGINEERS HEALTH AND  
3 WELFARE FUND, TRUSTEES OF THE OPERATING ENGINEERS VACATION-  
4 HOLIDAY SAVINGS TRUST, TRUSTEES OF THE OPERATING ENGINEERS  
5 TRAINING TRUST, TRUSTEES OF THE OPERATING ENGINEERS LOCAL 12  
6 DEFINED CONTRIBUTION TRUST, ENGINEERS CONTRACT COMPLIANCE  
7 COMMITTEE FUND, CONTRACT ADMINISTRATION FUND, SOUTHERN  
8 CALIFORNIA PARTNERSHIP FOR JOBS FUND, and OPERATING ENGINEERS  
9 WORKERS COMPENSATION TRUST, complain and allege:

10 **JURISDICTION AND VENUE**

11 1. This Court has jurisdiction of this case pursuant to section 502(e)(1) of  
12 the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) [29  
13 U.S.C. § 1132(e)(1)], which grants the United States District Courts exclusive  
14 jurisdiction over civil actions brought by a fiduciary pursuant to section 502(a)(3) of  
15 ERISA [29 U.S.C. § 1132(a)(3)], to redress violations or enforce the terms of ERISA  
16 or an employee benefit plan governed by ERISA. Such jurisdiction exists without  
17 respect to the amount in controversy or the citizenship of the parties, as provided in  
18 section 502(f) of ERISA [29 U.S.C. § 1132(f)].

19 2. This Court also has jurisdiction of this case pursuant to section 301(a) of  
20 the Labor Management Relations Act of 1947, as amended (“LMRA”) [29 U.S.C.  
21 § 185(a)], which grants the United States District Courts original jurisdiction over  
22 suits for violation of contracts between an employer and a labor organization in an  
23 industry affecting commerce, without respect to the amount in controversy and the  
24 citizenship of the parties.

25 3. Venue is proper in this Court pursuant to section 502(e)(2) of ERISA [29  
26 U.S.C. § 1132(e)(2)], and section 301(a) of the LMRA [29 U.S.C. § 185(a)], in that  
27 this is the district in which the Plaintiffs’ Trusts (defined below) are administered, the  
28

1 signatory union maintains union offices, and where the contractual obligation is to be  
2 paid.

3 4. To the extent this Complaint sets forth any state law claims, this Court  
4 has supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1367(a).

### 5 PARTIES

6 5. Plaintiffs, Trustees of the Operating Engineers Pension Trust, Trustees of  
7 the Operating Engineers Health and Welfare Fund, Trustees of the Operating  
8 Engineers Vacation-Holiday Savings Trust, Trustees of the Operating Engineers  
9 Training Trust, and Trustees of the Operating Engineers Local 12 Defined  
10 Contribution Trust (collectively “Trustees”), are the trustees of the five express trusts  
11 (collectively “Trusts”) created pursuant to written declarations of trust (“Trust  
12 Agreements”) between the International Union of Operating Engineers, Local Union  
13 No. 12 (“Local 12”), and various employer associations in the construction industry in  
14 Southern California and Southern Nevada. The Trusts are now, and were at all times  
15 material to this action, labor-management multiemployer trusts created and  
16 maintained pursuant to section 302(c)(5) of the LMRA [29 U.S.C. § 186(c)(5)]. All of  
17 the Trusts referenced above are administered by the Trustees in Los Angeles County.  
18 Plaintiffs, as Trustees of the Trusts, are “fiduciar[ies]” with respect to the Trusts as  
19 defined in section 3(21)(A) of ERISA [29 U.S.C. § 1002(21)(A)]. Plaintiff, Fund for  
20 Construction Industry Advancement, is an employer established and administered  
21 trust formed and created to protect and expand the interests of the construction  
22 industry. Plaintiff, Engineers Contract Compliance Committee Fund, was established  
23 by Local 12 in accordance with Section 6(b) of the Labor Management Cooperation  
24 Act of 1978 in order to improve job security and organizational effectiveness.  
25 Plaintiff, Southern California Partnership for Jobs Fund is an industry-wide  
26 advancement fund established by the employers and Local 12 Plaintiff, Operating  
27 Engineers Workers Compensation Trust is a trust fund established by Local 12 and  
28

1 certain employers to administer worker's compensation benefits. All plaintiffs are  
2 collectively referred to herein as the "Plaintiffs."

3 6. At all times material herein, Local 12 has been a labor organization  
4 representing employees in the building and construction industry in Southern  
5 California and Southern Nevada, and a labor organization representing employees in  
6 an industry affecting commerce within the meaning of § 301(a) of the Labor-  
7 Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)].

8 7. At all times material herein, defendant Titan Engineering, Inc., a  
9 California corporation ("Defendant"), has been a corporation duly organized and  
10 existing by virtue of the laws of the State of California with its principal place of  
11 business located in Murrieta, California.

#### 12 **BARGAINING AGREEMENT AND STATUS OF PARTIES**

13 8. On or around June 29, 1998, Defendant executed and delivered to Local  
14 12 a written collective bargaining agreement ("Agreement") whereby Defendant  
15 agreed to be bound by the terms and conditions, with certain exceptions, of certain  
16 written and existing agreements between various multi-employer associations and  
17 Local 12. In particular, Defendant agreed to be bound by the written Master  
18 Construction Agreement ("Master Agreement") in effect between Local 12 and the  
19 Southern California Contractors Association, a multi-employer association  
20 ("Association"), as well as the incorporated Trust Agreements. At all times since at  
21 least June 29, 1998, the Master Agreement has been a written collective bargaining  
22 agreement in effect between the Association and Local 12.

23 9. On or about June 29, 1998, Defendant executed written  
24 acknowledgments and acceptances of each of the Trust Agreements.

25 10. Defendant is an "*employer*," as that term is understood in the Master  
26 Agreement and related Trust Agreements.

27 11. Defendant is an "*employer*" as defined and used in section 3(5) of ERISA  
28 [29 U.S.C. § 1002(5)], and therefore, Defendant is "*obligated to make contributions to*

1 *a multiemployer plan*” within the meaning of section 515 of ERISA [29 U.S.C. §  
 2 1145]. Plaintiffs are informed and believe, and thereon allege, that Defendant is also  
 3 an “*employer*” engaged in “*commerce*” in an “*industry affecting commerce*,” as those  
 4 terms are defined and used in sections 501(1) and 501(3) of the LMRA [29 U.S.C. §  
 5 142(1) and § 142(3)], and within the meaning and use of section 301(a) of the LMRA  
 6 [29 U.S.C. § 185(a)].

### 7 **CLAIM FOR RELIEF**

#### 8 **Breach of Written Collective Bargaining Agreement and Violation of § 515 of** 9 **ERISA [29 U.S.C. § 1145]**

10 12. Plaintiffs hereby incorporate by reference paragraphs 1 through 11 above  
 11 to the same effect as if set forth here verbatim.

12 13. Section 515 of ERISA [29 U.S.C. § 1145], provides “[*e*]very employer  
 13 who is obligated to make contributions to a multiemployer plan under the terms of the  
 14 plan or under the terms of a collectively bargained agreement shall, to the extent not  
 15 inconsistent with law, make such contributions in accordance with the terms and  
 16 conditions of such plan or such agreement.”

17 14. Defendant is an “*employer*” as defined and used in § 3(5) of ERISA [29  
 18 U.S.C. § 1002(5)], and is “*obligated to make contributions to a multiemployer plan*”  
 19 within the meaning and use of section 515 of ERISA [29 U.S.C. § 1145].

20 15. By the terms and provisions of the Master Agreement and related Trust  
 21 Agreements, and at all times material herein:

22 A. Defendant agreed to prepare and submit true, complete and  
 23 accurate written monthly contribution reports (“Monthly Reports”) to Plaintiffs on a  
 24 timely basis showing the identities of its employees performing work covered by the  
 25 Master Agreement, the number of hours worked by or paid to these employees, and  
 26 based upon the hours worked or amounts paid to employees, the proper calculation of  
 27 the fringe benefit contributions due for such employees. The Monthly Reports are  
 28 either submitted in hard copy or electronically through an online reporting portal;

1           B. At all times material herein, Defendant has been obligated to  
2 submit its Monthly Reports and pay its contributions to Plaintiffs at Plaintiffs'  
3 administrative offices in Pasadena, California, on or before the 10th day of each  
4 successive month;

5           C. Defendant agreed to permit Plaintiffs and their agents to conduct  
6 audits of payroll and related records in order to determine if fringe benefit  
7 contributions have been properly paid pursuant to the Master Agreement and related  
8 Trust Agreements; and

9           D. Defendant agreed to pay to Plaintiffs fringe benefit contributions,  
10 benefits and/or withholdings on a monthly basis, and at specified rates for each hour  
11 worked by, or paid to, applicable employees. These amounts are due and payable at  
12 Plaintiffs' administrative offices in Pasadena, California.

13           16. On or about August 18, 2021, Plaintiffs sent Defendant a written request  
14 to conduct an audit of its payroll and related records pursuant to the terms of the  
15 Master Agreement. The Plaintiffs are informed and believe, and thereon allege, that  
16 Defendant has refused and continues to refuse to permit the Plaintiffs to conduct a  
17 contractually authorized audit of its payroll and related records, described in  
18 Paragraph 15, above.

19           17. Plaintiffs obtained certified payroll reports through a public records act  
20 request on three projects (i) the City of San Jacinto's construction project known as  
21 the Hewitt Street Rehabilitation project (the "Hewitt Project"); (ii) the County of  
22 Kern's construction project known as the Drainage Improvements at BENA Sanitary  
23 Landfill project (the "BENA Sanitary Project"); and (iii) the HHI San Bernardino,  
24 LLC's construction project known as the Street Improvements for Euclid Avenue  
25 State Route 83 and Kimball Avenue project ("Euclid Avenue Project") (Collectively  
26 "Public Works Projects").

27           18. Based on a review of the certified payroll reports for work performed on  
28 the Public Works Projects, Plaintiffs determined that Defendant breached the Master

1 Agreement and Trust Agreements, and its statutorily-mandated obligations under  
2 section 515 of ERISA [29 U.S.C. § 1145], by failing to report and pay fringe benefit  
3 contributions to the Plaintiffs in the sum of \$20,779.71 based on unreported hours,  
4 worked or paid, by Defendant during the work months of June 2020 through  
5 December 2021.

6 19. Plaintiffs are informed and believe, and thereon allege, that Defendant  
7 has failed to pay certain additional amounts of fringe benefit contributions not  
8 presently known to Plaintiffs. Due to Defendant's refusal to permit an audit, the exact  
9 amount of contributions and/or contract damages due and owing has not been  
10 ascertained at this time. These amounts will be established by proof at the trial herein.  
11 The amounts are due and payable at the Trusts' administrative offices in Pasadena,  
12 California.

13 20. Defendant is a "*delinquent*," as that term is used in the Master  
14 Agreement and related Trust Agreements.

15 21. Plaintiffs are informed and believe, and thereon allege, that there is no  
16 legal excuse for Defendant's breach of its obligations under the Master Agreement  
17 and related Trust Agreements in violation of section 515 of ERISA [29 U.S.C.  
18 § 1145].

19 22. Pursuant to the Master Agreement, Defendant agreed that in the event  
20 Defendant failed to pay or to timely pay fringe benefit contributions or otherwise  
21 comply with the terms and provisions of the Master Agreement and related Trust  
22 Agreements, Defendant would be considered delinquent with Plaintiffs and would pay  
23 Plaintiffs the greater of \$25.00 per month or ten percent (10%) of the total amount  
24 then due as liquidated damages for each delinquency. Defendant owes the Plaintiffs at  
25 least \$2,077.97 for liquidated damages.

26 23. Pursuant to section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], in any  
27 action by a fiduciary in which judgment is found in favor of the plan, the Court shall  
28 award the plan:(i) the unpaid contributions, (ii) interest on the unpaid contributions,



(iii) an amount equal to the greater of (a) interest on the unpaid contributions or (b) liquidated damages provided for under the plan in an amount not in excess of 20% (or such higher percentage as may be permitted under federal or state law) of the amount determined by the Court to be unpaid contributions, (iv) reasonable attorneys' fees and costs, and (v) such other legal or equitable relief as the Court deems appropriate. For purposes of section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], interest on unpaid contributions shall be determined by using the rate provided under the plan or, if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 6621.

24. Pursuant to the written Operating Engineers Trust Funds Joint Contribution Committee Collection Policy & Procedures ("Joint Collection Policy") promulgated by the Plaintiffs' Trustees pursuant to the authority granted to them by the Master Agreement and/or Trust Agreements, interest on unpaid or untimely paid fringe benefit contributions shall be calculated at 8% per annum. The Joint Collection Policy also provides that liquidated damages shall be assessed at 10% of unpaid or untimely paid contributions.

25. Pursuant to the Master Agreement, related Trust Agreements, Joint Collection Policy, and section 502(g)(2)(C) of ERISA [29 U.S.C. § 1132(g)(2)(C)], Defendant owes Plaintiffs liquidated damages. The exact amount of liquidated damages owed by Defendant to Plaintiffs will be established by proof.

26. Pursuant to the Master Agreement, related Trust Agreements, Joint Collection Policy, and section 502(g)(2)(B) of ERISA [29 U.S.C. § 1132(g)(2)(B)], Defendant owes Plaintiffs interest calculated at 8% per annum from the respective due dates on all unpaid or untimely paid fringe benefit contributions. The exact amount of interest owed by Defendant to Plaintiffs will be established by proof.

27. It has been necessary for Plaintiffs to engage legal counsel for the purpose of collecting said contributions and damages, and Plaintiffs are entitled to their reasonable attorneys' fees in connection therewith pursuant to the Master



1 Agreement, Trust Agreements, Joint Collection Policy, and section 502(g)(2)(D) of  
 2 ERISA [29 U.S.C. § 1132(g)(2)(D)]. The exact amount of the legal fees due and  
 3 payable has not been ascertained at this time. These amounts shall be established by  
 4 proof.

5 28. Plaintiffs are entitled to their audit costs in connection therewith pursuant  
 6 to the Master Agreement, Trust Agreements, Joint Collection Policy, and section  
 7 502(g)(2)(E). The exact amount of audit fees due and payable has not been  
 8 ascertained at this time. These amounts will be established by proof.

9 29. Pursuant to section 502(g)(2)(E) of ERISA [29 U.S.C. § 1132(g)(2)(E)],  
 10 the Court may grant such other legal or equitable relief as the Court deems  
 11 appropriate. As part of Plaintiffs' judgment, Plaintiffs shall request the Court to:

12 A. Order Defendant to post and deliver either a good faith deposit, or  
 13 a performance bond issued in favor of Plaintiffs in an amount determined by the Court  
 14 to be appropriate, and

15 B. Order the creation of a constructive trust on all applicable property  
 16 and order the transfer of the applicable property to Plaintiffs, and

17 C. Order Defendant to pay to Plaintiffs all amounts due to Plaintiffs,  
 18 including, but not limited to, the unpaid contributions, other damages for breach of  
 19 contract, legal fees, audit costs, and other expenses and damages incurred.

## 20 **PRAYER**

21 **WHEREFORE**, Plaintiffs pray for judgment against Defendant as follows:

22 1. For unpaid fringe benefit contributions of at least \$20,779.71, plus  
 23 additional amounts as proved;

24 2. For damages in amounts as proved;

25 3. For liquidated damages as proved;

26 4. For interest as proved;

27 5. For audit costs as proved;

1           6.     For reasonable attorneys' fees and costs of suit incurred, in amounts as  
2 proved; and

3           7.     For such additional relief as this Court deems just and proper, including,  
4 but not limited to, the following:

5                 7.1     An Order for the creation of a constructive trust on all applicable  
6 property, and an Order for the transfer of the applicable property to Plaintiffs; and

7                 7.2     For a good faith deposit or performance bond in favor of Plaintiffs  
8 in an amount equal to the total amount determined by this Court to be due to  
9 Plaintiffs, as proved.

10 Dated: January 5, 2023

Respectfully Submitted,

11 LAQUER URBAN CLIFFORD & HODGE LLP

12 By: /s/ Andrew Quinn Thompson

13 ANDREW QUINN THOMPSON

14 Counsel for Plaintiffs, Trustees of the Operating  
15 Engineers Pension Trust, et al.

16  
17 **WAIVER OF JURY TRIAL**

18 Plaintiffs hereby waive a jury trial in this action.

19  
20 Dated: January 5, 2023

Respectfully Submitted,

21 LAQUER URBAN CLIFFORD & HODGE LLP

22 By: /s/ Andrew Quinn Thompson

23 ANDREW QUINN THOMPSON

24 Counsel for Plaintiffs, Trustees of the Operating  
25 Engineers Pension Trust, et al.